

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #09	CCRB Case #: 202001757	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Friday, 02/21/2020 1:30 AM	Location of Incident: F Train Station at East Broadway	18 Mo. SOL 4/7/2022	Precinct: 07
Date/Time CV Reported Mon, 03/02/2020 7:05 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/02/2020 7:05 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Wade Liu	07774	958824	TB DT04
2. SGT John Zorrilla	03069	933511	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A . SGT John Zorrilla	Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)	
B . POM Wade Liu	Force: Police Officer Wade Liu used physical force against § 87(2)(b)	
C . SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against § 87(2)(b)	
D . SGT John Zorrilla	Force: Sergeant John Zorrilla used a taser against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 2, 2020, § 87(2)(b) filed this complaint with the CCRB online.

On February 21, 2020, at approximately 1:30 a.m., § 87(2)(b) was riding his bike through a subway tunnel in the East Broadway F Train station in Manhattan. PO Wade Liu and Sergeant John Zorrilla, both of Transit District 4, were performing a routine inspection of the station, observed § 87(2)(b) riding his bicycle, and approached him. During their interactions, Sergeant Zorrilla used O.C. spray against § 87(2)(b) (**Allegation A: Force,** § 87(2)(g)) PO Liu used physical force against § 87(2)(b) (**Allegation B: Force,** § 87(2)(g)) Sergeant Zorrilla used physical force against § 87(2)(b) (**Allegation C: Force,** § 87(2)(g)) and Sergeant Zorrilla used a conducted energy weapon (CEW) against § 87(2)(b) (**Allegation D: Force,** § 87(2)(g))

§ 87(2)(g), § 87(4-b)

On September 28, 2020, NYPD Legal provided 18 BWC videos from officers who responded to the location after the alleged misconduct. No video was relevant to the investigation.

§ 87(2)(b) was arrested during this incident on the top charge of resisting arrest. § 87(2)(b) [§ 86(1)(2)&(4)] [§ 87(2)(a)] was issued a desk appearance ticket for resisting arrest.

Findings and Recommendations

Allegation (A) Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)

It is undisputed that § 87(2)(b) was riding his bike in the train station tunnel and that officers approached him regarding this infraction. It is undisputed that there were no more than two other civilians in the tunnel, and that they did not involve themselves in this incident in any way. It is undisputed that officers asked § 87(2)(b) for his ID and that § 87(2)(b) did not immediately provide it.

§ 87(2)(b) stated that he rode his bike past Sergeant Zorrilla and PO Liu, and that he heard an officer yell, “get off the bike!” He began to dismount and heard an officer repeat the order. § 87(2)(b) finished dismounting his bike and began walking it as quickly as he could away from the officers. The officer pursued and stopped him, and Sergeant Zorrilla asked him for an ID. § 87(2)(b) stated he told the officers, “You guys are bored, mad you have to be here, looking for a random head to mount on a wall.” § 87(2)(b) went to reach for his identification and his bike almost fell to the ground. § 87(2)(b) reached to grab it, and Sergeant Zorrilla pointed a small black and yellow object at § 87(2)(b) face and yelled, “Give me some ID now!” Sergeant Zorrilla appeared to § 87(2)(b) to be attempting to point the object at § 87(2)(b) eyes. § 87(2)(b) began ducking and dodging the object to protect his eyes and stated, “What are you doing? Put the gun away.” Sergeant Zorrilla did not respond and sprayed a neon green liquid from the object into § 87(2)(b) mouth and eyes. § 87(2)(b) stated the liquid burned. (Board Review 01)

PO Liu stated that he and Sergeant Zorrilla were speaking to civilians in the tunnel when § 87(2)(b) entered the tunnel with a bicycle, got on it, and rode past him. PO Liu called out to him to get off

the bike, and § 87(2)(b) stopped but did not dismount. PO Liu approached § 87(2)(b) and stopped approximately two feet from the front bike tire. Sergeant Zorrilla did not approach the pair, remaining instead with the civilians farther down the tunnel. PO Liu ordered § 87(2)(b) to get off of his bike and told him that riding a bicycle inside a station is a violation. § 87(2)(b) did not get off his bike and stated that he rode his bike through the station every day. § 87(2)(b) stated he had done nothing wrong and challenged why he was stopped. PO Liu stated that § 87(2)(b) had to get off the bike or he would get a summons. § 87(2)(b) refused to get off his bike. As the conversation continued, § 87(2)(b) voice grew louder. He got off his bike and stood with his hands on the body of the bike with the bike between himself and PO Liu. He appeared to PO Liu to be tensing his muscles.

PO Liu decided to issue § 87(2)(b) a summons and asked for § 87(2)(b) ID. § 87(2)(b) refused to provide an ID. PO Liu asked again for § 87(2)(b) ID. Sergeant Zorrilla approached PO Liu and § 87(2)(b) took his O.C. spray from his belt, and sprayed § 87(2)(b) in the face. He did not speak with § 87(2)(b) beforehand. He did not warn § 87(2)(b) or PO Liu that he intended to use O.C. spray. PO Liu stated he had not yet advised § 87(2)(b) that failing to produce an ID would result in his arrest. (Board Review 02)

Sergeant Zorrilla denied using O.C. spray at this point in the interaction with § 87(2)(b). He stated he used O.C. spray against § 87(2)(b) during the incident, but that he had done so only one time and it was after he and PO Liu had physically struggled with § 87(2)(b) for three to four minutes while attempting to take § 87(2)(b) into custody. (Board Review 03)

Threat, Resistance and Injury Report § 87(2)(b) prepared by Sergeant Zorrilla for this incident states, “At TPO, defendant was riding on his bicycle inside East Broadway train station and refused to get off his bike and show any forms or types of identification when officers approached him. Defendant was very aggressive and got into a fighting stance. Sergeant deployed his O.C. spray and the defendant dropped to the floor.” (Board Review 04)

Patrol Guide Procedure 221-01 states, “All members of the service at a police incident must use reasonable force, employ less lethal alternatives, and prioritize de-escalation, whenever possible. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy.

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death.

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight

- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence. (Board Review 05)

Patrol Guide Procedure 221-02 states, "When a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-01, "Force Guidelines" and:

2. Utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, and increase the likelihood of gaining the subject's voluntary compliance.

10.c If the use of de-escalation and conflict negotiation techniques fail to persuade an uncooperative subject to cooperate, the supervisor/members of the service present should, if appropriate and consistent with officer safety: Advise the offender that physical force or other devices (e.g., O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate.

11. Apply no more than the reasonable force necessary to gain control." (Board Review 06)

Patrol Guide Procedure 221-07 states, "Use of O.C. pepper spray constitutes physical force under the New York State Penal Law. Use of O.C. pepper spray is proper when used in accordance with Article 35 of the Penal Law and Department procedures. O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force."

It further states, "In an effort to gain voluntary compliance, members of the service should advise the offender that O.C. pepper spray will be used to handcuff/restrain him/her before applying such force, if feasible." (Board Review 07)

Sergeant Zorrilla's testimony about his use of force is contradicted by § 87(2)(b) testimony, by PO Liu's testimony, and by his own statements on the TRI he prepared for the incident. Therefore, the CCRB credits that Sergeant Zorrilla used O.C. spray on § 87(2)(b) while § 87(2)(b) was standing with his bicycle, before any other attempt to take § 87(2)(b) into custody or use physical force against him, and without advising § 87(2)(b) he would use O.C. spray in a situation where doing so was feasible.

Sergeant Zorrilla's TRI for this incident stated that he used O.C. spray on § 87(2)(b) after § 87(2)(b) got into "a fighting stance." PO Liu stated that while § 87(2)(b) appeared to tense his muscles, he kept his hands on his bicycle. Neither the TRI nor PO Liu alleged that § 87(2)(b) attempted to fight an officer. According to PO Liu's testimony, he was both several feet from § 87(2)(b) and still in dialogue with him when Sergeant Zorrilla approached and used O.C. spray.

The factors Patrol Guide 221-01 requires Sergeant Zorrilla to have considered before using force on

§ 87(2)(b) do not support his use of force. The nature and severity of the crime, riding a bike in a subway tunnel, was low. The actions taken by the subject were physical compliance with the order to stop and verbal non-compliance. The action had been ongoing for fewer than five minutes. PO Liu's testimony contradicts that there were credible reasons to perceive § 87(2)(b) as an immediate threat to himself, officers, or others. § 87(2)(b) was not resisting custody when Sergeant Zorrilla sprayed him. § 87(2)(b) was stationary when Sergeant Zorrilla sprayed him. Members of service outnumbered § 87(2)(b) two to one. Both members of service were fit for duty. Officers had no knowledge of any violent history of § 87(2)(b). There was no hostile crowd, nor were there agitators. No officer expressed concern § 87(2)(b) was intoxicated.

§ 87(2)(g)

Instead, he approached an individual with whom a fellow officer was already speaking and deployed O.C. spray in the individual's face without notice to the individual or consulting the contact officer, his partner.

Patrol Guide Procedure 221-07 identifies the use of O.C. spray as force, instructs officers not to use O.C. spray when physical force would not be necessary, and, in feasible situations such as this one, instructs officers to specifically warn individuals of any impending use of O.C. spray so that they may voluntarily comply before it is necessary.

§ 87(2)(g)

Allegation (B) Force: Police Officer Wade Liu used physical force against § 87(2)(b)

Allegation (C) Force: Sergeant John Zorrilla used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after Sergeant Zorrilla used O.C. spray against him he moved away from the officers, and PO Liu performed a forcible takedown on him that resulted in § 87(2)(b) landing face-first in a puddle of urine on the subway tunnel floor. He alleged Sergeant Zorrilla then put his knee on § 87(2)(b) back. § 87(2)(b) was aware that PO Liu and Sergeant Zorrilla were attempting to place in him handcuffs and he struggled against them. § 87(2)(b) stated he was trying to get his face away from the urine and acknowledged that the officers likely interpreted his actions as resisting arrest. § 87(2)(b) alleged that he made several "push-up" motions to get his face off the ground, and that each time Sergeant Zorrilla pushed his knee into § 87(2)(b) back to keep him down. He described Sergeant Zorrilla's actions as "playing trampoline" on his back. During this time, § 87(2)(b) alleged PO Liu was holding his ankles. (Board Review 01)

PO Liu stated that after Sergeant Zorrilla used O.C. spray against § 87(2)(b) fell to the ground. No officer used a takedown. PO Liu moved toward him and attempted to place § 87(2)(b) in handcuffs, which § 87(2)(b) resisted by moving his arms and turning his body. He stated while this was happening he heard Sergeant Zorrilla charge and deploy his taser, after which Sergeant Zorrilla grabbed § 87(2)(b) legs. PO Liu saw § 87(2)(b) attempt to stand twice, and saw Sergeant Zorrilla pull § 87(2)(b) legs twice to prevent him from regaining his feet. (Board Review 02)

Sergeant Zorrilla stated that he and PO Liu attempted to place § 87(2)(b) in handcuffs while § 87(2)(b) was still standing by his bicycle, and that § 87(2)(b) engaged in active resistance against them. Sergeant Zorrilla defined active resistance as when someone is "wrestling and fighting, kicking and trying to punch" to avoid being handcuffed. He stated that after three to four minutes of

struggling on their feet, he and PO Liu were both able to take hold of § 87(2)(b) and they took him to the ground. Sergeant Zorrilla stated he held § 87(2)(b) legs, paused to use O.C. spray and his taser against § 87(2)(b) then grabbed § 87(2)(b) legs again while waiting for backup. (Board Review 03)

Patrol Guide Procedure 221-01 authorizes officers to use physical force “as necessary to gain control or custody of a subject.” (Board Review 05)

Patrol Guide Procedure 221-02 instructs officers to “avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject’s chest or back, thereby reducing the subject’s ability to breathe.” (Board Review 06)

The only force § 87(2)(b) alleged PO Liu used against him was a takedown and holding his legs. § 87(2)(b) acknowledged that he had been verbally non-complaint with PO Liu and that he moved away from officers after being pepper sprayed. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that Sergeant Zorrilla repeatedly and deliberately knelt on his back during the incident. PO Liu and Sergeant Zorrilla stated that Sergeant Zorrilla was primarily focused on § 87(2)(b) legs, but their recollections of the incident are materially different and contradictory.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Force: Sergeant John Zorrilla used a taser against § 87(2)(b)

It is undisputed that Sergeant Zorrilla used a taser against § 87(2)(b) during this incident.

§ 87(2)(b) stated he became aware that Sergeant Zorrilla had tased him when he felt like thumbtacks were being pushed into his buttocks. (Board Review 01)

PO Liu stated that while struggling with § 87(2)(b) on the ground he heard tones from Sergeant Zorrilla’s taser and understood Sergeant Zorrilla to have attempted to tase § 87(2)(b). He stated it was not effective, and he did not see Sergeant Zorrilla attempt it again. (Board Review 02)

Sergeant Zorrilla stated while struggling with § 87(2)(b) on the ground he drew his taser, stated to PO Liu that he was going to tase § 87(2)(b) and fired the taser prongs at § 87(2)(b) lower back area. He had been trained that was the most effective place to tase a person. § 87(2)(b) had clothes covering the area but it appeared to SGT Zorrilla that the prongs penetrated the clothing and connected with § 87(2)(b) skin.

SGT Zorrilla sent a charge to the prongs and heard § 87(2)(b) cry out. SGT Zorrilla saw § 87(2)(b) move his body in response to the taser charge. At the time he had expected the taser to subdue § 87(2)(b). § 87(2)(b) continued to move his body and kick his legs in the same manner as before. Seconds after the first charge to the prongs, SGT Zorrilla sent a second charge. Seconds after that he sent a third. He did not see § 87(2)(b) react to either follow-up attempt and did not know if the charges had been effective. He did not continue to use the taser. (Board Review 03)

Threat, Resistance and Injury Report § 87(2)(b) prepared by Sergeant Zorrilla for this incident states, “while attempting to place him in cuffs, defendant started resisting by flailing his arms and kicking. Sgt deployed his taser to gain compliance but defendant continued to resist. Sgt did then deploy taser to subject’s lower back, two consecutive cycles. One prong struck the subject in the lower back and Sgt was able to gain compliance.” (Board Review 04)

The Taser Information sheet for Sergeant Zorrilla’s taser shows that during the incident Sergeant Zorrilla drew and armed his taser, waited 40 seconds, and disarmed it without firing. 80 seconds later he re-armed his taser. SGT Zorrilla sent three consecutive 5-second charges, waited three seconds, sent another 5-second charge, waited ten seconds, sent a fifth 5-second charge, waited 35 seconds, and sent a sixth 5-second charge. The log shows the taser was conductive, recording its charged pre-deployment temperature as 24 degrees Celsius and its post-deployment temperature at 31 degrees Celsius. (Board Review 08)

Patrol Guide Procedure 221-08 states, “members should use a CEW for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary. Members should consider that exposure to the CEW for longer than fifteen seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. All applications must be independently justifiable, and the risks should be weighed against other force options.” (Board Review 09)

Sergeant Zorrilla stated on the TRI he prepared for this incident that he deployed his taser, observed § 87(2)(b) continuing to resist, and deployed it two more times and was able to gain § 87(2)(b) compliance. Sergeant Zorrilla stated to the CCRB that he deployed his taser, observed § 87(2)(b) continuing to resist, deployed it two more times, observed no effect on § 87(2)(b) and stopped using the taser.

Sergeant Zorrilla’s taser log shows that zero seconds passed between the end of Sergeant Zorrilla’s first five-second charge and the beginning of his second five-second charge, and only one second passed between the end of Sergeant Zorrilla’s second five-second charge and the beginning of his third. The log refutes that there was time for Sergeant Zorrilla to consider the impact of his first charge before he sent the second, much less the third.

Furthermore, although Sergeant Zorrilla stated on his NYPD documentation and to the CCRB that he sent a total of three charges during the incident, the taser log shows that he fired three additional five second charges after his initial, consecutive 15 seconds of charge over the course of the next three minutes.

Patrol Guide Procedure 221-08 states members should evaluate the need for a taser after one five second charge, advises them that more than fifteen seconds of exposure to taser charges, including multiple non-consecutive charges, endangers the subject, and requires each individual charge to be independently justifiable. Sergeant Zorrilla fired three consecutive charges without time to consider the impact, fired an additional three charges for a total time double the maximum safe exposure, and the taser log indicates all six charges were live. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 09)
- Sergeant Zorrilla has been a member of service for 17 years and has been a subject in nine other CCRB complaints with 25 other allegations, three of which were substantiated.
 - 201507072 involved a substantiated allegation of Abuse of Authority - Other against Sergeant Zorrilla. The board recommended Command Discipline B and the NYPD imposed no penalty.
 - 201509988 involved substantiated allegations of Force – Pepper Spray and Abuse of Authority – Retaliatory Arrest against Sergeant Zorrilla. The board recommended Command Discipline B and the NYPD imposed Command Discipline B.
 - Sergeant Zorrilla’s CCRB history includes three prior allegations of Force -Pepper Spray, one of which was substantiated. § 87(2)(g)
- PO Liu has been a member of service for 5 years and is a subject in one other CCRB investigation, which has not been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On June 30, 2021, the NYC Comptroller's Office FOIL Unit stated they found no notices of claim related to this incident.(Board Review 11)

Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>June 25, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date

CCRB Case # 202001757

